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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/454,761	12/06/1999	ROBERT D. GIBSON	81448	4209

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EXAMINER
BECKER, DREW E

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 08/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/454,761	GIBSON ET AL.	
	Examiner	Art Unit	
	Drew E Becker	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 June 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *5-12 and 16-21* is/are pending in the application.

4a) Of the above claim(s) *21* is/are withdrawn from consideration.

5)☐ Claim(s) *none* is/are allowed.

6)☒ Claim(s) *5-12 and 16-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed December 6, 1999 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the references lack publication dates.

For examination purposes, and to speed along prosecution, the Pyramid Radiant Wall Oven reference, will have either at least a 102(a) or 102(b) date. The examiner telephoned Pyramid and was told that the Radiant Wall Oven was put into mass production in October of 1998 and was in use at least as early as 1995.

Election/Restrictions

2. Newly submitted claim 21 is directed to an invention that is independent or distinct from the originally elected invention of group II in paper no. 7.

Since applicant has received an action on the merits for the originally elected invention, this invention has been constructively elected for prosecution on the merits. Accordingly, claim 21 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

3. This application contains claim 21 drawn to an invention nonelected with traverse in Paper No. 7. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Cl im Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 5-12 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liebermann [Pat. No. 5,189,948] in view of Radiant Wall Oven and Dagerskog et al [Pat. No. 4,565,704].

Liebermann teaches a method of cooking meat by preheating the meat at a first station (Figure 1, #38), applying infrared radiant heat at a searing station in order to char the meat (Figure 1, #40), applying steam to the meat at a second station in order to fully cook it (Figure 1, #10), cooling the cooked and charred meat at a third station (Figure 1, #42), transporting the product between the stations with a conveyor belt (Figure 1, #16), applying radiant heat at 1500-1700°F (column 6, line 14), and the steam being up to 205°F (column 4, line 60). Liebermann does not teach the first station being infrared heating, the meat being boned pork, separate conveyors, the infrared heating lasting for 1.5-1.75 minutes, and the steam cooking lasting for two hours. Radiant Wall Oven [RWO] teaches a method of heating food in a first browning station which employs 1500° radiant heat, a second station which employs a steam oven, and separate conveyors for each station (illustration). Dagerskog et al teach a method of cooking pork chops (column 3, line 16) with infrared heat. It would have been obvious to one of ordinary skill in the art to incorporate the pork chops of Dagerskog et al into the

invention of Liebermann et al since both are directed to methods of cooking meat, since Liebermann et al already included infrared heating (Figure 1, #40) and the use of meat in general (column 1, line 11), and since boned meats were commonly cooked with infrared heat as shown by Dagerskog et al (column 3, line 16). It would have been obvious to one of ordinary skill in the art to incorporate the first station infrared heating of RWO into the invention of Liebermann et al since both are directed to methods of cooking, since Liebermann et al already included a preheating first station (Figure 1, #38) as well as an infrared charring station (Figure 1, #40), since RWO teaches that foods were commonly browned with infrared heating before they were fully cooked (illustration), and since placing the infrared heating of Liebermann et al at the first station would have provided the preheating while simultaneously eliminating the need for a microwave station and the additional IR heating station and thus provided a savings in cost and space. It would have been obvious to one of ordinary skill in the art to incorporate the separate conveyors of RWO into the invention of Liebermann et al since both are directed to cooking methods, since Liebermann et al already possessed multiple stations connected by a conveyor (Figure 1, #16), and since the separate conveyors of RWO would have provided more flexibility by permitting the replacement of a station, for maintenance or cleaning, without the need to shut down the entire process. It would have been obvious to one of ordinary skill in the art to steam for two hours and heat with infrared radiation for 1.5-1.75 minutes in the invention of Liebermann et al since Liebermann et al already included steam heating to provide full-cooking and infrared heating to provide a charring effect (Figure 1, #10 & 40) but does

not recite any preferred treatment times, since treatment times such as these were commonly used, and since the treatment times would have been varied during the course of normal experimentation and optimization due to such factors as the size of the meat product, the desired degree of cooking and charring, and type of meat to name but a few examples.

6. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Liebermann et al, in view of RWO and Dagerskog et al, as applied above, and further in view of Mauer et al [Pat. No. 5,741,536].

Liebermann et al, RWO, and Dagerskog et al teach the above mentioned concepts. Liebermann et al, RWO, and Dagerskog et al do not teach marinating the meat. Mauer et al teach a method of cooking meat by first marinating it (Figure 1, #13). It would have been obvious to one of ordinary skill in the art to incorporate the marinating of Mauer et al into the invention of Liebermann et al since both are directed to methods of cooking meat, since Liebermann et al already included the use of flavor enhancers such as seasoning, salts, and spices (column 2, line 64), since meats were commonly marinated prior to being cooked, and since Mauer et al teach that marinating improves the moistness and flavor of the meat as they are heated (column 3, line 1).

7. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Liebermann, in view of Radiant Wall Oven, Dagerskog et al, and Mauer et al, as applied above, and further in view of Shaw et al [Pat. No. 4,196,219].

Liebermann, Radiant Wall Oven, Dagerskog et al, Mauer et al teach the above mentioned concepts. Liebermann, Radiant Wall Oven, Dagerskog et al, Mauer et al do

not teach immersing the cooked meat in a glaze before freezing. Shaw et al teach a method of treating meat by cooking it, immersing it in a glaze, and freezing it (column 2, line 47 to column 3, line 24). It would have been obvious to one of ordinary skill in the art to incorporate the glaze of Shaw et al into the invention of Liebermann, in view of Radiant Wall Oven, Dagerskog et al, and Mauer et al, since all are directed to methods of treating meat, since Liebermann already included cooking and freezing (Figure 1, #14 & 40), since Liebermann already included coating the meat with drippings from other pieces of meat (column 3, lines 3-19), and since Shaw et al teach that the glaze extended the storage life of the meat (abstract).

Response to Arguments

8. Applicant's arguments filed June 24, 2003 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicants argue that Dagerskog does not teach IR heating of the meat. However, Dagerskog clearly shows IR heaters placed both above and below the meat as it travels through the device (Figure 1, #17-18).

In response to applicant's argument that including RWO in the invention of Liebermann would destroy it, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, Liebermann teaches a process for precooking meat by use of a full-cooking step, a braising step, and a freezing step; while RWO teaches a method of precooking meat by first braising the meat and then cooking it. It would have been obvious to one of ordinary skill in the art to incorporate the first station infrared heating of RWO into the invention of Liebermann et al since both are directed to methods of cooking, since Liebermann et al already included a preheating first station (Figure 1, #38) as well as an infrared charring station (Figure 1, #40), since RWO teaches that foods were commonly browned with infrared heating before they were fully cooked (illustration), and since placing the infrared heating of Liebermann et al at the first station would have provided the preheating while simultaneously eliminating the need for a microwave station and thus provided a savings in cost and space.

Conclusion

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 8am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

Drew E Becker
Examiner
Art Unit 1761

August 21, 2003